



January 22, 2016

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## SENATE BILL No. 12

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DIGEST OF SB 12 (Updated January 20, 2016 12:13 pm - DI 106)

**Citations Affected:** IC 28-1; IC 34-30; IC 35-46; noncode.

**Synopsis:** Financial crimes against the elderly. Permits a financial institution to release certain financial records to a law enforcement agency or adult protective services unit if the financial institution reasonably suspects illegal activity in connection with the account, and provides immunity to a financial institution that releases, or does not release, this information. Permits a court to order a person convicted of exploitation of a dependent or endangered adult to disgorge all or some of any property the person received as the result of the death of the dependent or endangered adult. Urges the general assembly to assign the topic of adult protective services to a study committee during the 2016 legislative interim. (The introduced version of this bill was prepared by the study committee on corrections and criminal code.)

**Effective:** July 1, 2016.

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**Young R Michael, Zakas**

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January 5, 2016, read first time and referred to Committee on Judiciary.  
January 21, 2016, amended, reported favorably — Do Pass.

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SB 12—LS 6197/DI 106





January 22, 2016

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## SENATE BILL No. 12

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 28-1-2-30.6 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2016]: **Sec. 30.6. (a) The following definitions apply throughout**  
4 **this section:**

5 (1) "Adult protective services unit" has the meaning set forth  
6 in IC 12-10-3-1.

7 (2) "Endangered adult customer" means an individual:

8 (A) at least eighteen (18) years of age;

9 (B) who, in the good faith belief of a financial institution,  
10 is incapable by reason of mental illness, intellectual  
11 disability, dementia, or other physical or mental  
12 incapacity, of managing or directing the management of  
13 the individual's property; and

14 (C) who uses any service of a financial institution or for  
15 whom the financial institution acts as a fiduciary.

16 (3) "Law enforcement agency" has the meaning set forth in  
17 IC 35-47-15-2.

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(b) A financial institution may, in accordance with IC 12-10-3, release the personal or financial records relating to an endangered adult customer's account to an adult protective services unit or a law enforcement agency, or both if:

- (1) the endangered adult customer has an ownership interest or a beneficial interest in the account, in whole or in part; and
- (2) the financial institution reasonably suspects that illegal activity has taken place, or is or will be taking place, in connection with the account.

(c) A financial institution, and the director, officer, manager, employee, or agent of a financial institution, who, in good faith, releases or does not release the personal or financial records of a person in accordance with this section, is immune from civil liability under Indiana law for the release or failure to release a record described in this section. However, this subsection does not:

- (1) apply if the release or failure to release a record constitutes gross negligence or willful or wanton misconduct; or
- (2) relieve a person described in this subsection from the obligation to comply with the laws and regulations of the United States, of another state, or of a political subdivision of another state.

SECTION 2. IC 34-30-2-119.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 119.9. IC 28-1-2-30.6 (Concerning the release of or failure to release financial records of an endangered adult customer of a financial institution).**

SECTION 3. IC 35-46-1-12, AS AMENDED BY P.L.158-2013, SECTION 556, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 12. (a) Except as provided in subsection (b), a person who recklessly, knowingly, or intentionally exerts unauthorized use of the personal services or the property of:

- (1) an endangered adult; or
- (2) a dependent eighteen (18) years of age or older;

for the person's own profit or advantage or for the profit or advantage of another person commits exploitation of a dependent or an endangered adult, a Class A misdemeanor.

(b) The offense described in subsection (a) is a Level 6 felony if:

- (1) the fair market value of the personal services or property is more than ten thousand dollars (\$10,000); or
- (2) the endangered adult or dependent is at least sixty (60) years of age.



(c) Except as provided in subsection (d), a person who recklessly, knowingly, or intentionally deprives an endangered adult or a dependent of the proceeds of the endangered adult's or the dependent's benefits under the Social Security Act or other retirement program that the division of family resources has budgeted for the endangered adult's or dependent's health care commits financial exploitation of an endangered adult or a dependent, a Class A misdemeanor.

(d) The offense described in subsection (c) is a Level 6 felony if:

(1) the amount of the proceeds is more than ten thousand dollars (\$10,000); or

(2) the endangered adult or dependent is at least sixty (60) years of age.

(e) It is not a defense to an offense committed under subsection (b)(2) or (d)(2) that the accused person reasonably believed that the endangered adult or dependent was less than sixty (60) years of age at the time of the offense.

(f) It is a defense to an offense committed under subsection (a), (b), or (c) if the accused person:

(1) has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or a dependent; and

(2) was acting within the scope of the accused person's fiduciary responsibility.

**(g) In addition to any penalty imposed under IC 35-50-2, including an order of restitution, the court may order a person convicted of an offense under this section that is committed against an endangered adult or dependent to disgorge all or some of the property received from the endangered adult or dependent as a result of the endangered adult's or dependent's death, regardless of whether the property was received as a direct or indirect result of the offense. The court may order the property distributed to the surviving beneficiaries:**

**(1) subject to the terms of any will, trust, or other instrument transferring the property;**

**(2) on a pro rata basis; or**

**(3) in another equitable manner that serves the interest of justice.**

SECTION 4. [EFFECTIVE JULY 1, 2016] (a) The general assembly urges the legislative council to assign to an appropriate study committee for study during the 2016 legislative interim the topic of adult protective services, including the appropriate funding for adult protective services.



1       **(b) This SECTION expires November 1, 2016.**



## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 12, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 1, delete "may" and insert "**may, in accordance with IC 12-10-3,**".

Page 2, line 13, delete "not liable to any person" and insert "**immune from civil liability under Indiana law for the release or failure to release a record described in this section. However, this subsection does not:**

- (1) apply if the release or failure to release a record constitutes gross negligence or willful or wanton misconduct; or**
- (2) relieve a person described in this subsection from the obligation to comply with the laws and regulations of the United States, of another state, or of a political subdivision of another state."**

Page 2, delete lines 14 through 19.

and when so amended that said bill do pass.

(Reference is to SB 12 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 0.

